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October 17, 2002

02-329

## VIA COURIER

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline competition Bureau  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

RECEIVED

OCT 17 2002

**Re:** Application of Network Access Solutions Corporation (Debtor-in-Possession), Network Access Solutions, L.L.C., DSLnet Communications, LLC, and DSLnet Communications VA, Inc. for Domestic Section 214 Authorization to Transfer Control of Certain **Assets**

Dear Ms. Dortch:

On behalf of Network Access Solutions Corporation (Debtor-in-Possession), Network Access Solutions, L.L.C., DSLnet Communications, LLC, and DSLnet Communications VA, Inc., enclosed please find an original and **six (6)** copies of the above-referenced application, along **with** a check in the amount of \$815.00, payable to the FCC, which satisfies the filing fee required for this application under line 2.b. of Section 1.1105 of the Commission's **rules**.<sup>1</sup> Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,



Paul B. Hudson  
Counsel for DSLnet Communications, LLC

Enclosures

cc: William Dever (WCB) (via e-mail)  
Tracy Wilson (WCB) (via e-mail)  
Stephen Zamansky, DSLnet  
Rodney Joyce, Counsel to NAS

<sup>1</sup> See FCC **Suspends** Collection of the **July** 2002 Amended Schedule of Application Fees, **Public Notice**, DA 02-2513 (rel. Oct 4, 2002).

W 02-329

Network Access Solutions Corporation  
(Debtor-in-Possession)

File No. \_\_\_\_\_

and

and

# Domestic 214 Application for Authorization to Transfer Control of Certain Assets

Network Access Solutions Corporation (Debtor-in-Possession) (“**NAS Corp.**”) and Network Access Solutions, LLC (“**NAS LLC**”) (together, “**NAS**”); and DSLnet Communications, LLC, DSL.net, Inc., and DSLnet Communications VA, Inc. (together, “**DSLnet**”; and together with **NAS**, “**Applicants**”) through their undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Sections **1.763, 63.03** and **63.04** of the Rules of the Federal Communications Commission (“**Commission**”), 47 C.F.R. §§ **1.763, 63.03, 63.04**, hereby request, to the extent necessary, authority to transfer control of certain **assets** and customers from **NAS** to **DSLnet**.

Applicants respectfully request expedited consideration of this Application in order to allow NAS to transfer the assets immediately upon the approval of the sale by the United States Bankruptcy Court. The Proposed Transaction is an important component of the NAS reorganization, and securing the necessary regulatory authority on ~~an~~ expedited basis is key to stabilizing the assets to be sold, thereby reducing the risk of service disruption for NAS' customers.

Moreover, because Applicants are non-dominant carriers, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.04(b)(2)(i). Accordingly, the Applicants respectfully request that the Commission commence its examination of the Proposed Transaction and place ~~this~~ Application on public notice immediately. It is in the interest of all parties – NAS, its creditors, customers, employees, and DSLnet – that the process be completed quickly.

In support of this Application, Applicants provide the following information:

**I. The Applicants**

**A. NAS**

NAS Corp. is a Delaware corporation with principal offices located at **Three Dulles Tech Center**, 13650 Dulles Technology Drive, Herndon, Virginia 20171. NAS Corp. holds domestic interstate Section 214 authority pursuant to blanket Section 214 authority conferred by Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01. NAS Corp. is a non-dominant carrier that provides high-speed data transmission service, principally using DSL technology.

NAS LLC is a Virginia limited liability company with principal offices located at **Three Dulles Tech Center**, 13650 Dulles Technology Drive, Herndon, Virginia 20171.

NAS LLC holds domestic interstate Section 214 authority pursuant to blanket Section 214 authority conferred by Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01. NAS LLC is a non-dominant carrier that provides high-speed data transmission service in Virginia, principally using DSL technology.

## **B. DSLnet**

DSLnet Communications, LLC is a Delaware limited liability company. DSLnet Communications VA, Inc. is a Virginia corporation. Both have principal offices located at 545 Long Wharf Drive, Fifth Floor, New Haven, Connecticut 06511 and are wholly owned by DSL.net, Inc., a Delaware corporation with its principal offices located at the same address.

DSLnet holds domestic interstate Section 214 authority pursuant to blanket Section 214 authority conferred by Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01. DSLnet also is authorized to provide facilities-based and/or resold local exchange and interexchange telecommunications services in 50 states and local exchange service in the District of Columbia pursuant to certification, registration or tariff requirements, or on a deregulated basis. DSLnet is a non-dominant carrier that provides high-speed data transmission service, principally using DSL technology.

## **II. NAS Corp. Petition in Bankruptcy**

On June 4, 2002, Network Access Solutions Corporation, along with certain of its affiliates, filed for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 with the United States Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court"). Pursuant to Section 63.03(d)(2) of the Commission's Rules, 47 C.F.R. § 63.03(d)(2), NAS has previously notified the Commission of the *pro forma* assignment of NAS' domestic interstate Section 214 authority to NAS as a Debtor-in-Possession.

#### **111. The Proposed Transaction**

As part of the NAS reorganization, on October 16, 2002, NAS, together with certain of its wholly-owned subsidiaries (collectively "Sellers"), and DSLnet executed an asset purchase agreement (the "Agreement"), whereby, among other transactions in connection with the Agreement, Sellers will sell to DSLnet certain NAS assets and data customer accounts (the "Proposed Transaction"). The assets being transferred include network equipment supporting the provision of high-speed data service and certain data services accounts. None of the customers involved in the Proposed Transaction receives circuit-switched local exchange, intraLATA toll or interLATA toll services from NAS. The NAS assets and customer base to be acquired are located in Connecticut, the District of Columbia, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia.

The Applicants hope to consummate the Proposed Transaction as soon as all necessary government approvals are obtained, including the approval of the Commission and the U.S. Bankruptcy Court.

#### **IV. The Proposed Transaction Will Serve the Public Interest**

The Proposed Transaction is in the public interest because it will promote the continuation of service to NAS' current data customers and will allow DSLnet to expand its operations in a cost-efficient manner, thereby enhancing its competitive position and ability to provide high quality data services. The NAS customers acquired by DSLnet will be served by a strong data service provider with an extremely well qualified technical and operational management team. The integration of the NAS assets into DSLnet's network will proceed smoothly due to the companies' similar network configuration and service offering. DSLnet believes that it can operate the purchased assets in an efficient and economical manner and

bring a stronger financial basis to these operations. The Proposed Transaction will permit DSLnet to provide an array *of* high quality, economical and efficient data services, enhance competition and thus serve the public interest.

**V. Information Required by Section 63.04 of the Commission's Rules**

Applicants submit the following information in support of their request for Section 214 authority pursuant to Section 63.04(a) of the Commission's Rules.

**(1) Name, address and telephone number of each Applicant:**

Transferors

Network Access Solutions Corporation	FRN: 0004356226
Network Access Solutions L.L.C.	
Three Dulles Tech Center	
13650 Dulles Technology Drive	
Hemdon, Virginia 20171	
Tel: (703) 793-5000	
<b>Fax:</b> (703) 793-5400	

Transferees

DSLnet Communications, LLC	FRN: 0004324851
DSLnet Communications VA. Inc.	
545 Long Warf Drive, Fifth Floor	
New Haven, Connecticut 06511	
Tel: (203) 772-1000	
Fax: (203) 624-3612	

**(2) Jurisdiction of Organizations:**

NAS Corp. is a corporation organized under the laws of the State of Delaware. NAS LLC is a limited liability company organized under the law of the Commonwealth of Virginia. DSLnet Communications, LLC is a limited liability company organized under the laws of the State of Delaware. DSLnet Communications VA, Inc. is incorporated in the Commonwealth of Virginia.

**(3) Correspondence concerning this Application should be sent to:**

**For DSLnet:**

Stephen Zamansky  
Senior Vice President & General Counsel  
DSL.net, Inc.  
545 Long Warf Drive, Fifth Floor  
New Haven, Connecticut 06511  
Tel: (203) 782-7459  
Fax: (203) 624-4231

with a copy to:

Andrew D. Lipman  
Kathleen L. Greenan  
Paul B. Hudson  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W. Suite 300  
Washington, DC 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7645

**For NAS:**

Donald H. Sussman  
Network Access Solutions Corporation  
Three Dulles Tech Center  
13650 Dulles Technology Drive  
Herndon, Virginia  
Tel: (703) 793-5000  
Fax: (703) 793-5400

**with** a copy to:

Rodney L. Joyce  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, NW  
Washington, DC 20005-2004  
Tel: (202) 639-5602  
Fax: (202) 783-4211

**(4) Equity Ownership – Name, Address, Citizenship and Principal Business of 10% Owners:**

The Proposed Transaction will not impact the current ownership of any Applicant. The addresses of the companies listed below are set forth in Section I above or are provided below.

**NAS LLC:**

<u>Name</u>	<u>Percentage</u>	<u>Citizenship</u>	<u>Principle Business</u>
NAS Corp.	100%	U.S.	Communications

**NAS Corp.:**

<u>Name</u>	<u>Percentage</u>	<u>Citizenship</u>	<u>Principle Business</u>
Brion B. Applegate (beneficially for Spectrum Equity Investors II, L.P.)	31% (on fully diluted basis)	U.S.	Institutional Investor
Jonathan P. Aust	14% (on fully diluted basis)	U.S.	Communications

**DSLnet Communications, LLC:**

<u>Name</u>	<u>Percentage</u>	<u>Citizenship</u>	<u>Principle Business</u>
DSL.net. Inc.	100%	U.S.	Communications

**DSLnet Communications VA, Inc.:**

<u>Name</u>	<u>Percentage</u>	<u>Citizenship</u>	<u>Principle Business</u>
DSL.net. Inc.	100%	U.S.	Communications

**DSL.net Inc:**

<u>Name</u>	<u>Percentage</u>	<u>Citizenship</u>	<u>Principle Business</u>
VantagePoint Venture Partners 1001 Bayhill Drive, Suite 300 San Bruno. CA 94066	71%	U.S.	Communications



(5) Anti-Drug Abuse Certification:

Please see certifications of Applicants attached hereto as *Exhibit A*.

(6) Description of the Transaction:

As noted in Section III above, by this Application, Applicants **seek** approval to consummate the Proposed Transaction.

(7) Geographic Area Description:

NAS Corp. provides high-speed data services to customers located in Connecticut, the District of Columbia, Delaware, Maryland, Massachusetts, New Jersey, **New** York, and Pennsylvania. NAS LLC provides data services to customers located in Virginia. The Proposed Transaction involves transfer of assets by **NAS** to DSLnet in each of the nine jurisdictions listed above. DSLnet or DSLnet Virginia already provides data telecommunications services in each of these jurisdictions.

(8) Presumption of Non-Dominance and Qualification for Streamlining:

The present application qualifies for expedited processing under Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.04(b)(2)(i), because (1) the Proposed Transaction would not result in DSLnet having a market share in the interstate, interexchange market of 10 percent or **more**; (2) the Proposed Transaction would not result in DSLnet providing any competitive telephone exchange services or exchange access services in any geographic areas not also served by a dominant local exchange carrier that is not a party to the transaction; and (3) none of the Applicants is a dominant carrier with respect to any service. The Proposed Transaction in no way holds any potential for lessening competition since it only involves one non-dominant carrier purchasing assets from another non-dominant carrier.

**(9) Other pending Commission applications:**

There are no other Commission applications related to the Proposed Transaction,

**(10) Special Consideration:**

**As** described above, NAS Corp. is subject to the jurisdiction of the Bankruptcy Court. In order to assure an orderly and seamless closing of this proposed transaction upon Bankruptcy Court approval, the Applicants request expedited treatment of this Application to allow approval to be received as soon as possible.

**(11) Waiver requests:**

None

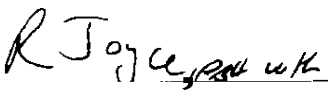
**(12) Public Interest Statement:**

**As** demonstrated in Section IV above, grant of this Application will serve the public interest, convenience and necessity

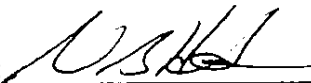
**VI. CONCLUSION**

Based on the foregoing, Commission approval of the proposed transfer of control of certain assets from NAS to DSLnet will **serve** the public interest, convenience, and necessity.

Respectfully submitted this 17<sup>th</sup> day of October.

By:   
Rodney L. Joyce  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, NW  
Washington, DC 20005-2004  
Tel: (202) 639-5602  
Fax: (202) 783-4121

*Counsel to Network Access  
Solutions*

By:   
Andrew D. Lipman  
Paul B. Hudson  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W. Suite 300  
Washington, DC 20007-5116  
Tel: (202) 945-6940  
Fax: (202) 424-7645

*Counsel to DSLnet Communications, LLC and  
DSLnet Communications VA, Inc.*

**EXHIBIT A**

**APPLICANTS' CERTIFICATIONS**

## CERTIFICATION

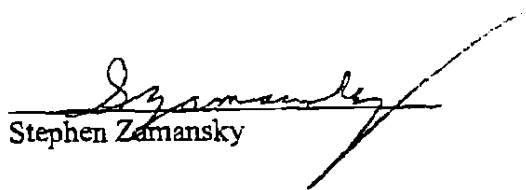
I, Jonathan P. Aust, President of Network Access Solutions Corporation and **Network** Access Solutions, L.L.C., hereby certify that the information in this application as it pertains to Network Access Solutions Corporation and Network Access Solutions, L.L.C. is true and accurate to the best ~~of~~ my knowledge and that to the best of my knowledge no party to this application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a), as amended.

  
Jonathan P. Aust

Date: October 1<sup>st</sup>, 2002

## CERTIFICATXON

i, Stephen Zamansky, Senior Vice President and ~~General~~ Counsel of DSL.net. Inc., DSLnet Communications, LLC and DSLnet Communications **VA, Inc.**, hereby *certify* that the information ~~in~~ this Application as it **pertains to** DSL.net, Inc., DSLnet Communications, LLC and DSLnet Communications **VA, Inc.** is true and accurate to the **best** of my knowledge and **that to** the best of my knowledge no party to **this application** is subject to a denial ~~of~~ **Federal** **benefits** pursuant to ~~section~~ 5301 ~~of the~~ Anti-Drug Abuse Act of 1988.21 U.S.C. § 853(a), as mended.

  
Stephen Zamansky

Date: October 16, 2002

INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

APPROVED BY OMB  
3060-0589  
of

CC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

Swidler Berlin Shereff Friedman, LLP

(3) TOTAL AMOUNT PAID (dollars and cents)

5815.00

(6) CITY

Washington

(7) STATE

DC

(8) ZIP CODE

20007

(9) DAYTIME TELEPHONE NUMBER (include area code)

202-424-7500

(10) COUNTRY CODE (if not in U.S.A.)

DSLnet Communications, LLC

(14) STREET ADDRESS LINE NO. 1

545 Long Wharf Drive

(15) STREET ADDRESS LINE NO. 2

Fifth Floor

(16) CITY

New Haven

(17) STATE

CT

(18) ZIP CODE

06511

(19) DAYTIME TELEPHONE NUMBER (include area code) 203-772-1000

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

0004-3248-51

(22) APPLICANT (TIN)

0061523903

COMPLETE SECTION C FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) FCC CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE (PTC)

CUT

(25A) QUANTITY

1

(26A) FEE DUE FOR (PTC)

5815.00

(27A) TOTAL FEE

5815.00

FCC USE ONLY

(23B) FCC CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE (PTC)

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

I, Paul B. Hudson, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE [Signature] DATE 10-17-02

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER

EXPIRATION DATE



MASTERCARD



VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2002 (REVISED)